

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff(s),

v.

EDWIN YOSHIHIRO FUJINAGA and MRI
INTERNATIONAL, INC., et al.,

Defendant(s).

Case No. 2:13-CV-1658 JCM (CWH)

ORDER

Presently before the court are the report and recommendation of Magistrate Judge Hoffman. (Doc. # 186). Defendants filed an objection, (doc. # 187), and the SEC filed a reply, (doc. # 192).

I. Background

The instant case arises from a Ponzi scheme perpetrated by defendants. Defendants collected hundreds of millions of dollars for purported investments in medical accounts receivable. Defendants used these funds to repay earlier investments as well as for their own personal expenses. By May 2013, defendants had entirely depleted the invested funds. (Doc. # 118).

On September 11, 2013, the SEC filed a civil enforcement action against defendants. (Doc. # 2). On October 7, 2013, the parties stipulated to the entry of a preliminary injunction. (Doc. # 20). On December 11, 2013, defendants filed an answer to plaintiff's complaint. (Doc. # 27). The parties completed discovery by July 8, 2014. (Doc. # 138).

On July 16, 2014, the SEC filed a motion for summary judgment on liability. (Doc. # 113). On October 3, 2014, the court granted the SEC's motion. (Doc. # 156).

1 On September 12, 2014, the SEC filed a motion to appoint an equitable receiver. (Doc. #
2 145). Defendants filed a response, (doc. # 153), and the SEC filed a reply, (doc. # 155). The court
3 also received bid proposals from potential receivers. (Doc. # 186).

4 On October 30, 2014, Judge Hoffman held a hearing on the motion. (Doc. # 170). The
5 court determined that it would recommend appointing a limited receiver to manage and maintain
6 real property involved in the instant case. (Doc. # 186). The court directed the parties to submit
7 a proposed stipulated order. (Doc. # 170).

8 On November 7, 2014, the SEC filed a proposed order. (Doc. # 174). Defendants objected,
9 (doc. # 175), and the SEC replied, (doc. # 176). The court reviewed the proposed order and noted
10 many issues. (Doc. # 186). Accordingly, the court ordered the parties to submit a joint revised
11 proposed order reflecting the court's findings and instructions. (Doc. # 180).

12 On December 10, 2014, the SEC submitted a proposed order. (Doc. # 181). On December
13 11, 2014, Judge Hoffman issued a minute order noting that the SEC's proposed order did not
14 appear to be stipulated to by the parties. (Doc. # 182). Accordingly, Judge Hoffman allowed
15 defendants time to file a responsive pleading. (Doc. # 182).

16 On December 16, 2014, defendants filed a response explaining that they had agreed with
17 the SEC on the language of the proposed order. (Doc. # 183). Defendants noted that they asked
18 the SEC to remove the term "stipulated" to preserve appellate rights or rights to request
19 reconsideration. (Doc. # 183). However, defendants stated that they had "no objection to the form
20 of the Proposed Order as submitted by the SEC." (Doc. # 183).

21 On January 7, 2015, Judge Hoffman issued a report and recommendation. (Doc. # 186).
22 Judge Hoffman recommended that a limited receiver be appointed and that the revised proposed
23 order, (doc. # 181), be adopted in its entirety. (Doc. # 186). Judge Hoffman further recommended
24 that Robb Evans & Associates LLC be appointed as the limited receiver in the instant case. (Doc.
25 # 186).

26
27 On January 24, 2015, defendants filed an objection to the report and recommendation,
28 belatedly highlighting perceived issues with the joint proposed order and arguing that a limited

1 receiver should not be appointed. (Doc. # 187). On February 9, 2015, the SEC filed an opposition
2 to defendants' objections. (Doc. # 192).

3 **II. Legal Standard**

4 A party may file specific written objections to the findings and recommendations of a
5 United States magistrate judge made pursuant to Local Rule IB 1-4. 28 U.S.C. § 636(b)(1)(B);
6 LR IB 3-2. Where a party timely objects to a magistrate judge's report and recommendation, the
7 court is required to "make a de novo determination of those portions of the [report and
8 recommendation] to which objection is made." 28 U.S.C. § 636(b)(1). The court "may accept,
9 reject, or modify, in whole or in part, the findings or recommendations made by the magistrate."
10 *Id.*

11 Pursuant to Local Rule IB 3-2(a), a party may object to the report and recommendation of
12 a magistrate judge within fourteen days from the date of service of the findings and
13 recommendations. LR IB 3-2(a). Similarly, Local Rule 7-2 provides that a party must file an
14 opposition to a motion within fourteen days after service of the motion. LR 7-2.

15 **III. Discussion**

16 In the instant objection, defendants first claim that appointment of a receiver is not
17 necessary in this case. (Doc. # 187). Defendants contend that the SEC has made an insufficient
18 showing as to the necessity of a receiver. (Doc. # 187).

19 Further, defendants claim that the proposed order improperly "contains numerous
20 provisions not envisioned or addressed at the October 30, 2014 hearing" (Doc. # 187).
21 Defendants accordingly argue that they should be afforded an opportunity for a full hearing or full
22 briefing on the merits of imposing these additional requirements. (Doc. # 187).

23 Having reviewed the parties' filings de novo, the court concurs with Judge Hoffman's
24 report and recommendation and will adopt them in their entirety. The court has already granted
25 summary judgment for the SEC and entered judgment in the instant case. These findings
26 demonstrate defendants' fraudulent conduct. At the hearing before Judge Hoffman, the parties
27 presented competent evidence of damage to the properties. Judge Hoffman properly concluded
28 that appointment of a limited receiver is warranted to preserve the properties and interests at issue.

1 *See Solis v. Matheson*, 563 F.3d 425, 438 (9th Cir. 2009) (discussing factors to be considered upon
2 request to appoint receiver).

3 Defendants' arguments regarding the proposed order's additions are without merit. The
4 SEC properly included the proposed order's additions pursuant to the court's December 2, 2014,
5 order. (Doc. # 180). Having reviewed the evidence and the court's December 2, 2014, order, the
6 court finds these additions to be appropriate.

7 Additionally, defendants expressly consented to the proposed order in their December 16,
8 2014, response to the court. (Doc. # 183). Defendants had an adequate opportunity to raise
9 objections to the appointment of a receiver, and the scope of that appointment, at the hearing before
10 Judge Hoffman on October 30, 2014. (Doc. # 170).

11 For the foregoing reasons, the court will adopt Judge Hoffman's report and
12 recommendation in their entirety. The court will enter the SEC's proposed order and will appoint
13 Robb Evans & Associates LLC as the limited receiver in this case.

14 **IV. Conclusion**

15 Accordingly,

16 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the report and
17 recommendation of Magistrate Judge Hoffman, (doc. # 186), are ADOPTED in their entirety.

18 The court will enter the proposed order, (doc. # 181), appointing Robb Evans & Associates
19 LLC as the limited receiver in this case.

20 DATED February 23, 2015.

21 
22 _____
UNITED STATES DISTRICT JUDGE